

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-536

October 7, 1998

MONHEGAN PLANTATION POWER DISTRICT
Petition for Authority to Serve

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order we grant the Monhegan Plantation Power District authority to serve pursuant to 35-A M.R.S.A. §§ 2102 and 2105.

II. PROCEDURAL BACKGROUND

On July 1, 1997, the Commission approved the formation of the Monhegan Plantation Power District (District) pursuant to 35-A M.R.S.A. §§ 3904-3915. The Commission found that the District had complied with the requirements of the Municipal Electric District Enabling Act. This statute allows a municipality to form a power district upon the favorable vote of the residents. 35-A M.R.S.A. § 3904(4). The Commission noted that the District would need further Commission approval under 35-A M.R.S.A. § 2102 if it planned to provide electrical service where another utility is currently furnishing service.

On July 14, 1998, the District filed a Petition for Authority to Serve (Petition), pursuant to 35-A M.R.S.A. §§ 2102, 2105, and 3915.¹ The District seeks authority to serve on Monhegan Plantation where there is already a public utility engaged in providing similar services. The District argues that the Commission should authorize a second utility to serve because service provided by the existing electric utility, Central Monhegan Power (Central), is inadequate. The District urges that the public convenience and necessity requires a second utility and that it has the technical and financial ability to construct, operate and manage a second utility.

The Commission noticed this proceeding by Order issued on August 5, 1998. The following are parties to this proceeding: the

¹The filing also included a 10-person complaint filed pursuant 35-A M.R.S.A. § 1302, alleging that the acts and practices of the existing utility, Central Monhegan Power, are unsafe, inadequate and unreasonable and that adequate service cannot be obtained. The Commission is separately processing this complaint in Docket No. 98-583.

District, Central, the Public Advocate, the Coalition for Sensible Energy (CSE) and the Land Use Regulation Commission (LURC). All parties, except CSE, attended a prehearing conference on August 18, 1998. Following the prehearing conference, a technical conference took place where the parties had an opportunity to conduct oral discovery.²

The Commission held a hearing on the District's Petition on September 9, 1998, pursuant to the requirements of 35-A M.R.S.A. § 2105(1). Witnesses included the District's three trustees (Bill Boynton, Lexy Krause and Katy Boegel) and Monhegan's First Assessor Chris Smith; Raymond Remick for Central; John Williams for LURC; and Ralph Chapman for CSE.³ The parties waived briefs and the Hearing Examiner issued her recommended decision on September 18, 1998. CSE, OPA and William Payne filed exceptions to the Hearing Examiner's Report. The Commission considered this matter at its deliberations on October 5, 1998.

III. DESCRIPTION OF CURRENT SITUATION ON MONHEGAN

Monhegan Plantation is a 650-acre island, located 13 miles from the mainland of Maine. There are 70 full-year residents, 400 seasonal residents and up to 250 overnight visitors during the island's approximately 4-month tourist season. Dist. Ex.1. Monhegan was incorporated as a Plantation in 1839 and is governed by a Board of Assessors. The Land Use Regulation Commission regulates local planning and zoning. LURC also enforces many of the site location laws that the Department of Environmental Protection (DEP) would enforce within its jurisdiction.

A unique feature on Monhegan is its principal aquifer. According to John Williams, director of LURC and a certified geologist,

Monhegan is really fortunate for an island on the rockbound coast of Maine to have a fairly deep sand pocket, which is what they have on the meadow location. The sand holds quite a bit of water. It transmits the water well and it's covered by a layer of clay and peat. The reason

²The Examiner entered into the record the transcript of the technical conference, without objection from any party.

³The Public Advocate filed a letter stating he could not attend the hearing but supported the District's Petition for the reasons stated in his August 24, 1998 comments.

it's a meadow is the clay and peat tend to hold water up, forming a wetland at the surface, but underneath that is a good size sand and gravel aquifer. And it is that aquifer that has allowed Monhegan to have the relatively high summer population that they have because they can get a water supply from the aquifer which serves not only the summer residents but the businesses that cater to the tourism industry on the island. In addition to that aquifer -- and that aquifer has now been declared a sole source aquifer by the Environmental Protection Agency, which gives it a special status and raises the level of concern about it. There is water available in fractures in rock, which is the situation throughout much of Maine, and people on the island rely on those fractured rock aquifers in the wintertime when the water supply is not operating; but that's a very limited resource. It could not serve, in my opinion, the population that is on Monhegan Island in the summertime . . . but the sole source aquifer, which is the only possible public drinking water supply on the island, is extremely vulnerable to pollution.

Many Monhegan residents and the village area, including stores, church, school and library, receive electric service from Central Monhegan Power. Central developed from a small operation started by Victor Lord and Raymond Remick. They began providing a number of households with electricity from a central generator around 1985. The Commission did not consider this to be a utility due to its restrictive nature and limited scope of the services.

In 1986, LURC granted Mr. Remick and Mr. Lord an after-the-fact permit for their generators. In 1987, LURC amended the permit. In June of 1996, LURC found Central to be out of compliance with its permits; its operations had now expanded to the meadow site without a permit. Mr. Remick signed a settlement agreement in November 1996, agreeing to take certain actions related to his generators (then located near the Monhegan House, also on the aquifer) and fuel storage. The agreement required the Monhegan House site to be shut down by June 1997 and the meadow site shut down by December 1, 1997.

By letter on August 2, 1996, the Monhegan Board of Assessors asked the Commission to determine whether Central was a public utility. Following a summary investigation conducted by Commission Staff, the Commission determined that Central is a public utility as defined in 35-A M.R.S.A. § 102(13). Public Utilities Commission, Request for Commission Investigation into Central Monhegan Power,

Docket No. 96-481 (Oct. 17, 1996). The Commission ordered Central to file rate schedules and request any necessary waivers of Commission rules. Mr. Remick, the current sole owner of Central, met with the staff once but to date has not filed rate schedules or waiver requests.

In December 1997, LURC extended the deadline for removal at the meadow site to August 1, 1998. In August 1998, LURC agreed to delay the imposition of penalties until after the conclusion of the Public Utilities Commission proceedings.

Central now serves approximately 78 accounts. Central's generators are located in a building located beside the water utility's water pump building, across the Meadow from the village. Fuel for the generators is also stored at the generator site on the Meadow.

The electrical distribution system is entirely buried in conduit. There are no transformers, voltage regulators, or lightning arrestors. Each customer is supplied with two-phase conductors and a neutral conductor. This gives the customer 120 volts from each phase conductor to the neutral and 208 volts between phase conductors. This compares with normal single-phase service with 120 volts from phase conductors to the neutral and 240 volts between phase conductors. Some customers are limited to a 40-amp service. Docket No. 96-481, Order at 3-4. The current energy charge is \$0.50/kWh.

IV. LEGAL STANDARD

Under 35-A M.R.S.A. § 2102 a public utility must obtain prior Commission approval before it may generate, sell, or distribute electricity in or to any municipality where another public utility is furnishing a similar service. To allow a second utility to serve, the Commission must find, after a public hearing of all interested parties, that the public convenience and necessity requires a second public utility. The Commission has applied a 3-prong test for determining when the public convenience and necessity requires a second utility. See e.g., Mid Maine Gas Utilities Inc., Request for Approval to Furnish Gas Service, Docket No. 96-465 (March 7, 1997) (Mid-Maine Gas); Pine Tree Tel. and Tel., Application for Public Convenience and Necessity, Docket No. 82-49 (Oct. 14, 1982). In Standish Telephone Co. v Public Utilities Commission, 499 A.2d 458, 459 (Me. 1985), the Law Court described the test as requiring a showing that: 1) a public need for the proposed services exists; 2) the applicant has the technical ability to provide the service; and; 3) the applicant possesses adequate financial resources to complete the project.

V. EVIDENTIARY SHOWING TO MEET THE TEST

A. Need

A public need exists for a second utility if the Commission finds that the service sought by customers is unavailable or inadequate. Id. at 462. The record in this case demonstrates that Central is not providing service of a type and quality demanded by the citizens of Monhegan and it does not meet state-mandated environmental and utility service standards. The District Trustees and Monhegan's First Assessor all testified about the inadequacy of Central's service, which has further deteriorated over the last 6 months.

Central recently maintained two generators on the island, one of 175 kW to meet daily load and a back-up generator of 125 kW. In July 1998, the main generator broke down. The back-up generator was unable to meet peak summer demand, sometimes shutting down 2-3 times a day. Mr. Remick, the owner of Central, removed the main generator for repairs from the island in late July 1998 and did not respond to the District's request for his plans on replacing the generator. He did not replace it.

The Assessors, concerned about health and welfare of Monhegan's citizens and visitors, leased a 205 kW back-up generator (at \$6000 per month⁴), after various state emergency agencies and the Maine National Guard were unable to provide a generator. In the view of the Plantation's Assessors, the lack of a back-up generator created an emergency. The Plantation's water supply and other essential facilities, such as the ramp on the Plantation's wharf, rely on electricity. First Assessor, Mr. Smith, testified that in his opinion the back-up generator presented a fire hazard from leaking oil and overheating.

Central's fuel truck broke down and has not been repaired or replaced. A borrowed truck is now used to transport fuel to the Meadow site. The old truck is being used to store fuel. Mr. Williams testified that using the truck for this purpose is not acceptable to LURC. Mr. Smith testified that the current fuel storage methods increase chances for spillage by requiring multiple transfers of fuel.

Board members also testified that voltage from the existing distribution system is erratic, often resulting in low voltage. Mr. Remick admitted that voltages "in the high nineties" had occurred

(Commission Rule, Chapter 32, requires voltage to be no lower than

⁴Mr. Remick subsequently agreed to pay \$1,500 of this amount.

114 volts).

Central is also unable to provide adequate service to Monhegan residents because Mr. Remick is required by settlement agreement with LURC to remove his generators and any fuel storage from its location on the Island's aquifer. In December 1997, LURC extended the settlement deadline to remove the generators from the aquifer until August 1, 1998, because Central had substantially complied with other requirements of the agreement and LURC recognized that the Plantation was making progress, through the formation of a municipal power district, towards finding an alternative power supply.

Mr. Remick acknowledged that LURC will not allow his operation to continue in its current location on the aquifer and that he has been unable to find land for an alternative location. He stated he would not mind being bought out of his business. During the technical conference, Mr. Remick stated that if he had a site he "would not be against running a utility" but since he does not have a site he's "against running a utility".

During the winter of 1998, the District undertook extensive efforts to find an off-aquifer site for generation. The District approached the Monhegan Associates about purchasing or leasing land controlled by the Associates. The Monhegan Associates is a land trust that controls almost all the undeveloped land on the island (approximately 65% of all land on Monhegan). The Associates acquire and hold land to preserve it from development. The Associates voted on July 3, 1998 to lease a 1-acre parcel to the District for use as a generator site. The District is negotiating the terms of a lease at this time. Mr. Williams testified that LURC has not yet issued permits for the site but he is optimistic that it will meet LURC's requirements. Board member Mr. Krause testified that he believed the Associates were willing to lease the land to the District but likely would not lease it to a private operator.

During the hearings, only Mr. Chapman, on behalf of the CSE, argued that the Commission should not authorize the District or (any utility) to serve on Monhegan. He suggested that Monhegan residents would be better served by no utility, and residents could receive power through what he called a distributed interconnected system.

We reject Mr. Chapman's arguments. The residents of Monhegan have shown their desire to operate a utility on Monhegan by voting to establish a municipal electrical district. Maine statutes specifically allow residents of a municipality to form a power district "to generate, supply or extend the efficient use of electricity for public purposes and for the health, welfare, comfort and convenience of the inhabitants of the district." 35-A M.R.S.A. §

3902. The Commission will not second guess the decisions of this legally constituted body, beyond the specific authority granted the Commission in Title 35-A. The residents of Monhegan, through their municipal power district, may choose the type of system necessary to meet their electrical needs. The Commission is responsible for ensuring that utilities provides safe, reasonable, and adequate service to customers at rates that are just and reasonable and for authorizing a second utility if the public convenience and necessity require it.

The record demonstrates that electrical service currently being provided by Central is inadequate to meet the needs of Monhegan's residents. The one generator under the control of Central is inadequate to meet loads and is not in good repair. Back-up generation is being provided by the Plantation. Finally, the generators cannot remain in their current location. The District is the only entity that has been able to acquire a site outside the aquifer on which to locate the generators. Therefore, there is a need for the District to provide electrical service on Monhegan.

B. Technical Capability

In determining whether a second utility has the technical ability to serve, the Commission has considered the past experience of the utility's principals or employees in constructing facilities and providing service; relevant educational and engineering qualifications; demonstrated competence in recognizing the need for selecting consulting, engineering and construction assistance; and knowledge of industry practices and local conditions. See e.g., Mid Maine Gas at 11.

The District initially hired Frank Bowles to create a plan for moving the generator from the aquifer and correcting deficiencies in the distribution system. Mr. Bowles designed the electrical system in place on Matinicus Island, an offshore island similarly situated to Monhegan. The District currently plans to proceed in two phases. In the first phase the District will install an interim diesel generation system with fuel storage, located outside the aquifer. In phase II, the District plans a hybrid system using diesel generators in conjunction with renewable energy, possibly solar or wind. As part of this phase, the District will over time rebuild the distribution system. The District is currently interviewing engineering firms and contractors to design and install phase I and II.

The Commission does not expect the volunteer board of a municipal utility to possess the necessary expertise to design, build and operate an electric utility. Instead, the board must demonstrate it has the ability to plan for and hire the proper personnel to carry

out the design, construction and operation of the utility. The District's board has been meeting regularly since its inception in July 1997. The board has, and is, taking reasonable steps in planning and hiring the necessary qualified firms to carry out its plan. The engineering firms being considered all have experience in electric supply system design and construction. CSE and Mr. Payne argue that the board lacks the necessary technical capability, citing in particular that the board is only now in the process of hiring necessary engineering assistance after fourteen months, with no final selection in place. They also note that metering of electrical load only began at the end of August. Given the complexities of this situation, the District's board has proceeded prudently through the planning process. We expect the District to follow through on its planning and hiring the necessary employees and contractors to operate a safe and reliable system.

We find that the District has demonstrated sufficient technical capability to proceed with its plans to operate a municipal utility.

C. Financial Capability

In determining whether a second utility has the financial ability to undertake service, the Commission has examined past experience in similar financings, the level of investment proposed, current assets and liabilities and credit history. See e.g., Mid-Maine Gas at 12. In this instance, we are considering a new municipal utility that will be eligible for grants and certain borrowings based on its status as a special purpose unit of local government.

The District has obtained initial funds for planning and moving the generators. In September 1997, the Plantation received a \$10,000 planning grant from the Office of Community and Economic Development (OCED) and voted to raise \$5,000 in matching funds. The Plantation then obtained a \$100,000 emergency community development block grant (CDBG) from OCED to be used to move the generator from the aquifer site. A group of residents recently pledged \$70,000 in loans to the District. The District has had additional discussions with two banks. The District is in the process of developing a business plan. It plans to apply for a \$400,000 CDGB grant in December. It has hired a grant writer to assist in this process. The District currently expects the phase I system to cost \$400,000 and the new distribution system approximately \$500,000. They currently project the total cost for phase I and II at \$1.3 M.

We find that the District has taken reasonable steps to explore and obtain initial financing. Before granting second utility status, we do not require financing to be in place. Instead, we require the utility to demonstrate that it has the capability and the likelihood of being able to obtain the necessary financing. The District has demonstrated this capability.

VI. THE DISTRICT'S USE OF THE CENTRAL'S DISTRIBUTION SYSTEM

As described above, the District plans in phase I to install new diesel generators off the aquifer. The District plans to use Central's distribution system until it can build a new distribution system. The District and Mr. Remick have not agreed to the terms of such an arrangement. Under 35-A M.R.S.A. § 3135, to alleviate a power shortage which exists due to an emergency, the Commission can order an electric utility to transport temporarily, electricity over its transmission or distribution facilities at a reasonable charge and in a manner the Commission directs. The record in this case demonstrates that an emergency exists; Central is unable to provide sufficient, safe, generation, in compliance state environmental standards. Based on the record developed we can order Mr. Remick to distribute electricity produced by the District's generators.

Mr. Remick, however, has stated his preference to get out of both the generation and distribution businesses. At the time of the hearing, Mr. Remick had not provided the necessary financial information to determine Central's net book value. On October 2, 1998, Mr. Remick did file copies of tax returns for Central and PUC Annual Reports for 1996 and 1997.

We urge Mr. Remick and the District to continue to discuss a purchase or lease of Mr. Remick's assets. It is apparent that the distribution system has some value for at least the next few years. Even if the Commission requires interconnection, we would have to establish a value for use of the system. We will not order interconnection at this time. If the District and Mr. Remick are unable to agree on the terms of a sale or lease, we will order such an interconnection. The parties shall report back to the Commission by October 21, 1998 on the status of negotiations. If negotiations are unsuccessful, we will establish a process for implementing the interconnection pursuant to 35-A M.R.S.A. § 3135.

Accordingly, we

O R D E R

1. That the Monhegan Plantation Power District is authorized to serve electricity to customer's on Monhegan Plantation pursuant to 35-A M.R.S.A. §§ 2102, 2105; and

2. That the Monhegan Plantation Power District shall file a report by October 21, 1998, on the status of its negotiations with Central Monhegan for use of Central's distribution system or the purchase of Central.

Dated at Augusta, Maine, this 7th day of October, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR:

WELCH
NUGENT

COMMISSIONER ABSTAINED:

DIAMOND